It was argued by Mr. Lee Thean-Chu on behalf of the appellant that the learned President had not exercised his discretion judicially; that he had wrongly drawn unfavourable inferences against the appellant from the evidence when other and more favourable inferences could have been drawn and that the appellant had discharged the onus cast on him by section 30 of the Ordinance.

Mr. Lee Thean-Chu referred me to certain decisions only one of which I feel might be considered as being relevant to this appeal. It is that of Pretheroe J. in *Public Prosecutor v. Lim Geok Ching & Tan Yow*[1]. That decision was concerned with the law as stated in paragraph 17(1) of the Opium and Chandu Proclamation, since repealed, and which read as follows :—

"All opium and chandu in respect of which any offence under this Proclamation or any breach of any rule made thereunder has been or is being committed together with the utensils, vessels, packages, vehicles and conveyances in which the same may be found or which may have been used in connection with such offence or breach, may be seized by any Chandu Officer and, if seized, may be forfeited by order of the District Court having jurisdiction in the district in which the same was seized, provided that no order of forfeiture of any vessel shall be made if such vessel exceeds one hundred tons burden."

Pretheroe J. held that in the case of a highly penal provision like that contained in paragraph 17(1) of the Opium and Chandu Proclamation, it is necessary to establish some degree of complicity on the part of the owner of a vehicle before the forfeiture of the vehicle can be ordered.

But that decision cannot be applied to the very different situation in which an owner is now placed by section 30(2) of Ordinance No. 30 of 1952 which reads as follows :—

"When any dangerous drug, in respect of which any offence under this Ordinance, or any breach of the restrictions or conditions subject to or upon which any licence has been granted has been or is being committed, is found in any conveyance, such conveyance may be seized by any officer of customs or police officer and, subject to the provisions of sub-section (3) of this section shall be forfeited, unless it is proved, to the satisfaction of the Court, that the offence or breach had been or was being committed without the knowledge, consent or connivance of the owner."

It is no longer the duty of the prosecution to prove some degree of complicity on the part of the owner. On the contrary, to avoid forfeiture the owner must prove to the satisfaction of the Court that the offence was committed without his knowledge, consent or connivance.

In my opinion the appellant in the case under review clearly failed to discharge this onus. I cannot agree that the learned President drew wrong inferences or that from the evidence different inferences more favourable to the appellant could have been drawn. Moreover, for very good reasons the President did not believe the appellant and I consider he was correct in finding that the owner (appellant) had failed to prove to his satisfaction that the offence was committed without his knowledge, consent or connivance.

The appeal is accordingly dismissed.

Appeal dismissed.

In re LOO MOH SAI

[Cr. R. J. (Rigby J.) August 16, 1956]

[Penang — Criminal Revision No. 15 of 1956]

Criminal Trial — Sentence — Corporal punishment — Penal Code s. 379.

In this case the accused pleaded guilty to the theft of three fowls contrary to section 379 of the Penal Code. He was sentenced 2 years' imprisonment and ten strokes of the rattan.

Held: corporal punishment should not be imposed against adults except in cases involving violence and therefore the sentence of corporal punishment in this case should be set aside.

Cases referred to :—

(1) *Endut bin Bakar v. Public Prosecutor* noted under Editorial Note (1956) M.L.J. 84.

(2) *Mohamed Ali v. Public Prosecutor* (1956) M.L.J. 84.

CRIMINAL REVISION.

Rigby J. : — The accused in this case, a young man aged 28, pleaded guilty to the theft of three fowls valued at $10, contrary to section 379 of the Penal Code.

The brief facts of the case are that the complainant was awakened at night by the sound of a noise coming from the compound in which he kept his fowls. He went out and there in the compound, by the light of his torch, he saw a man. He gave chase and the man ran away and escaped. Close by the fowl house the complainant found a bicycle, a shirt and a pair of slippers. He also found three fowls with their legs tied together. Obviously they had been so tied by the thief with the object of stealing them and carrying them away, but he had been disturbed before he was able to do so. The accused was arrested the following day and the bicycle, shirt and slippers identified as his property. There was no doubt that he was, in fact, the thief and was disturbed by the complainant at

at that time. The learned Magistrate sentenced him to two years' imprisonment and ten strokes of the rattan. The accused has no less than ten previous convictions during the course of the last ten years, eight of which have been for theft. Whilst the sentence of imprisonment is undoubtedly severe, having regard to his previous criminal record I am quite unable to say that it is too severe, and I do not propose to interfere with it.

As to the sentence of corporal punishment, however, the High Court has laid it down on a number of occasions that whilst it is legally within the power of a Magistrate to impose corporal punishment upon a conviction for an offence of this nature, the modern tendency in penal procedure and reform is against the imposition of corporal punishment on adults, except in cases involving violence — See the decisions of Mathew C.J. and Buhagiar J. in the cases of *Endut bin Bakar v. Public Prosecutor*[1] and *Mohamed Ali v. Public Prosecutor*[2]. Both these decisions were briefly referred to in the Monthly Bulletin of Written Judgments of the Supreme Court in Criminal matters dated the 17th April, 1956 circulated to all Magistrates.

There was no question of any violence in connection with the commission of this offence. The sentence of corporal punishment is accordingly set aside. The terms of imprisonment, as I have said, is confirmed.

Order accordingly.

PUBLIC PROSECUTOR v. TAY YEW LIA

[A. Cr. J. (Good J.) September 8, 1956]

[Muar — Criminal Appeal No. 5 of 1956]

Customs Ordinance, 1952, ss. 115 & 131(2) — Knowingly being in possession of uncustomed goods — Presumption — Rebuttal.

In this case the facts were that on a search of the respondent's shop in Muar a Customs Officer found 73 packs of playing cards. The respondent was charged for being knowingly in possession of uncustomed goods. He was acquitted and the Public Prosecutor appealed. On appeal reliance was placed on the presumption in section 131(2) of the Customs Ordinance, 1952 which provides that "in any prosecution under this section any uncustomed goods shall be deemed to be uncustomed goods to the knowledge of the defendant unless the contrary be proved by such defendant." It was argued that unless a person had reason to believe that the duty had been paid he cannot be said not to know it has not been paid.

Held: (1) what the defendant had to prove to rebut the presumption under section 131(2) of the Customs Ordinance, 1952 was that he does not know the duty has not been paid;

(2) in this case the respondent had succeeded in rebutting the presumption and therefore was rightly acquitted.

MAGISTRATE'S CRIMINAL APPEAL.

Bahaudin bin Yacob (Federal Counsel) for the appellant.

Respondent in person.

Good J. : — A question of interpretation, which to the best of my knowledge has not previously been decided in the precise form that it takes here, arises on this appeal.

The respondent is a shopkeeper in Muar. On a search of his premises by a customs officer 73 packs of playing cards were discovered. Although the majority of them were wrapped in newspaper there is no suggestion that they had been hidden: 60 packs wrapped in newspaper were in a glass case in the shop and the remaining 13 packs were on a shelf. On a charge of being knowingly in possession of uncustomed goods the shopkeeper was acquitted, and the Public Prosecutor appealed.

The effect of section 115 of the Customs Ordinance, 1952, is that if a customs officer finds a person in possession of dutiable goods anywhere in the Federation he can take him to Court and make him prove that the duty has been paid, or make him rebut the presumption of knowledge which is created by section 131(2). It is the interpretation of the latter sub-section which is in question here. For the sake of brevity I am treating uncustomed goods, for the purposes of this appeal, as dutiable goods which have been "smuggled" into the Federation, that is, imported without the import duty having been paid. The definition of "uncustomed goods" in the Ordinance is, of course, wider than this.

The principle underlying the argument of the appellant seems to be that a person who acquires dutiable goods honestly in the ordinary course of business ought to have no difficulty in tracing the goods back to the time and place of importation and showing that import duty has been paid: in which case the Customs, if satisfied of the genuineness of his explanation and the proof of it, would not have to resort to proceedings in Court. If "A" buys a bottle of whisky from a shop in Johore Bahru, and the Customs demand proof that the duty has been paid on it "A" can refer them to the shop where he bought it and the shopkeeper will no doubt be able to satisfy them that it was part of a consignment imported by an importing house in Singapore from which he bought it wholesale in the ordinary course of business. But the appellant's argument in this appeal is that if "A" chooses to buy a bottle of whisky from a person whom he does not